

AMENDMENTS TO THE DRAWINGS

The Examiner objected to the drawings under 37 CFR §1.83(p)(5). The specification and the drawings have been amended to address the objection. Therefore, Applicant respectfully requests withdrawal of this objection.

REMARKS

Applicant wishes to thank the Examiner for the careful consideration given to this case. Initially, the Examiner objected to the Information Disclosure Statement for failing to comply with 37 CFR §1.98(a)(2). A copy of the article has been included in a concurrently filed supplemental Information Disclosure Statement to address this objection. The drawings were objected to for failure to comply with 37 CFR §1.84(p)(5). The specification and the drawings have been amended to address this objection.

In the final Office action, claims 1-7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over G.B. Patent No. 2369591 (Worthington) in view of U.S. Patent No. 6,333,093 (Burrell et al.).

Rejection of Claims 1-7 under 35 U.S.C. § 103(a)

Applicant submits that the claims are non-obvious over Worthington in view of Burrell because there is simply no motivation to combine the cited references. *See* MPEP §2143 (stating that an element of a *prima facie* case of obviousness under §103(a) is that there must be some suggestion or motivation to modify the reference or to combine the teachings of the references). More particularly, Applicant submits that modifying the teachings of Worthington with the teachings of Burrell would render Worthington unsatisfactory for its intended purpose, contrary to a permitted combination under the statute.

In order to combine references, the proposed modification cannot render the prior art unsatisfactory for its intended purpose. *See* MPEP 2143.01 (V) (stating that if the proposed modification would render the prior invention being modified unsatisfactory for its intended

purposes, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984)).

Worthington appears to disclose a filter attached at the patient's neck. Worthington at 3:3-4. The Examiner states that Worthington does not expressly disclose the use of a nebulizing agent on the absorbent central core. The Examiner states that Burrell discloses adding water to a surgical dressing in order to maintain the humidity of the wound. Burrell at 18:28-40. In particular, Burrell teaches that "the dressing ... [is] kept at 100% relative humidity by the application of sterile water" in order to decrease the chance of an infection. *Id.* at 18:27-40. The Examiner then suggests that the Applicant's invention would be obvious over Worthington in light of Burrell.

It is respectfully submitted, however, that the modification of Worthington by Burrell would cause Worthington to be unsatisfactory for its particular purpose. The combination of Worthington and Burrell would cause moisture from Burrell's dressing to be added to Worthington's filter. Adding moisture to the filter would cause the filter to become either clogged or contaminated. If the filter is clogged or contaminated, the filter can no longer "assist in the maintenance of desirable conditions within the patient's airway." Worthington at 1:15-16. As such, the proposed modification or combination of Worthington and Burrell would destroy the functionality of the filter and make Worthington unsatisfactory for its intended purpose.

Furthermore, Burrell teaches a wound dressing that is used to heal a wound using moisture. Burrell at 15:28-31. The wound in Burrell is kept moist by direct exposure to the moist pad. In contrast, the nebulizing agent of claim 1 provides both vapor and exposure to air. If the wound in Burrell is exposed to air, the wound would become dry. In other words, the

exposure of Burrell's moist pad to air would destroy the functionality of the moist pad disclosed in Burrell and dry both the wound and the pad.

As such, Applicant submits that independent claim 1 is nonobvious over the combination of Worthington and Burrell because there is no motivation to combine the cited references. *See* MPEP §2143. The combination of Worthington and Burrell is not a "predictable use of prior art elements according to their established functions." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. ____ (2007). Applicant further submits that claims 2-7, which depend from and incorporate all of the limitations of claim 1, are also nonobvious over the cited references. *See* MPEP §2143.03 (stating that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious). Accordingly, for the reasons set forth hereinabove, Applicant requests that the §103(a) rejections associated with claims 1-7 be withdrawn.

All of the stated grounds of rejection have been properly traversed or accommodated. Applicant therefore respectfully requests that reconsideration and withdrawal of all presently outstanding rejections. There being no other rejections, Applicant respectfully requests that the current application be allowed and passed to issue.

If the Examiner believes for any reason that personal communication will expedite prosecution of this application, I invite the Examiner to telephone me directly.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for this Amendment and Response, or credit any overpayment, to deposit account no. 05-0426.

Respectfully Submitted,
PEPPER HAMILTON LLP

A handwritten signature in black ink, appearing to read 'R. Miller', with a long horizontal flourish extending to the right.

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